

- (ii) access to such information or document has a bearing on the objects of the Council.
- (5) (a) The Committee shall take special precaution to ensure that no information or document referred to in subsection (2) to which it gains access is disclosed to unauthorized persons.
 - (b) No person other than the members of the Committee shall be present at any meeting of the Committee unless such person's presence is necessary and is authorized by the Committee.
- (6) If any person, including any participant in the Council, on being requested by the Council or a subcouncil in terms of any provision of this Act to furnish any information to it, refuses or fails to furnish such information or document or contends that such information or document is exempt from disclosure by virtue of subsection (2), the Council or subcouncil may request the Committee to scrutinize that information or document.
- (7) The Council or a subcouncil may at any time request the Committee to scrutinize any information or document in the possession or under the control of any Government or administration, or any participant in the Council or any political party.
- (8) The Committee shall as soon as possible after receiving a request contemplated in subsection (6) or (7), establish whether the information or document concerned has a bearing on the objects of the Council and if so shall scrutinize the information concerned with a view to verify -
 - (a) whether or not that information or document is exempt from disclosure by virtue of subsection (2); and
 - (b) if it is so exempt, whether or not the information or document or anything dealt with therein has an adverse effect on the attainment of the objects of the Council, and if so, in what manner.
- (9) (a) For the purpose of subsection (8), the Committee may interview any person and may direct any person in writing to appear before it to produce any information or document in the possession or under the control of that person, and may question that person and require an explanation of anything contained in such a document.
 - (b) Any person who fails to comply with a direction referred to in subsection (a), shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 12 months.

- (10) If the Committee finds that any information or document that is exempt in terms of subsection (2) or anything dealt with therein has an adverse effect on the attainment of the objects of the Council, the Committee may make such information or document or segregable portion thereof available to the Council or a subcouncil, subject to such limitations relating to access, publication and safekeeping as may be imposed by the Committee.
- (11) The Committee shall in writing notify the Council or the subcouncil concerned and the persons referred to in subsection (6) or the Government, administration or political party concerned, as the case may be, of its finding, which finding shall be binding on the parties concerned and shall be given effect to.
- (12) (a) No person, including any member of the Council or a subcouncil or of the Committee, shall disclose any confidential information or document obtained by that person in the performance of his or her functions in terms of this Act, except -
- (i) to the extent to which it may be necessary for the proper administration of a provision of this Act;
 - (ii) to any person who of necessity requires it for the performance of any function in terms of this Act;
 - (iii) when required to do so by order of a court of law; or
 - (iv) with the written permission of the Council.
- (b) Any person who contravenes a provision of paragraph (a) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 12 months.

Resolution of disputes

23. (1) If any Government, political party or organization contends, in relation to a directive issued by the Council in terms of section 13(1)(b), (2)(b) or (3) that the necessity or desirability for any proposed legislation, or any action or for the implementation of any directive, as the case may be, outweighs the adverse effect it may have on the attainment of the objects of the Council, that Government, political party or organization may, within three days after such directive was issued, refer the matter concerned to the Special Electoral Court for its decision, and may only proceed with such legislation or action or implement such directive, as the case may be, if or in so far as the Special Electoral Court authorizes it to do so.

- (2) When there is any disagreement between the Council or a subcouncil and any participant in the Council or any political party or any organization as to whether or not -
- (a) a particular matter falls within the scope of the powers of the Council or subcouncil;
 - (b) any proposed legislation or executive or other action may have an adverse impact on the attainment of the objects of the Council;
 - (c) such a participant, political party or organization is obliged to comply with a direction of the Council or subcouncil,
- the participant, political party or organization concerned may refer the matter to the Special Electoral Court for its decision.
- (3) When any matter is referred to the Special Electoral Court in terms of this Act, that Court shall as soon as practicable consider the matter and give its decision, having due regard to -
- (a) the views expressed on the matter by members of the Council or the subcouncil concerned and by the Government or political party or organization concerned; and
 - (b) any other matter considered by the Special Electoral Court to be relevant for its decision.
- (4) The Special Electoral Court may make such findings and give such instructions or directions as it may consider appropriate in the circumstances.
- (5) The findings of the Special Electoral Court shall be final and binding and shall not be subject to further appeal.
- (6) A direction issued by the Council or a subcouncil in terms of this Act and which is not referred to the Special Electoral Court within three days after the Government, political party or organization concerned was notified of that direction, shall be binding on the Government, political party or organization concerned.
- (7) The provisions of this section shall not apply to subsections (1)(c), (2), (4), (5) and (6) of section 15.

Meetings and office-bearers

24. (1) The first meeting of the Council shall take place on a date and at a place agreed to by the Negotiating Council and specified in the first proclamation issued under section 4(4), which date shall not be later than 14 days after the publication of that proclamation.
- (2) The Council shall, after its first meeting, meet at such times and places as it may determine.
- (3) (a) The Council shall, at its first meeting, designate from among its members a chairperson or chairpersons.
- (b) At that meeting a person designated by the Negotiating Council shall preside until a chairperson or chairpersons, as the case may be, have been designated.
- (4) (a) The Council shall, at its first meeting, from among its members designate a management committee.
- (b) The management committee shall -
- (i) until the rules contemplated in section 7(1)(f) have been made, determine the manner of convening meetings of the Council and the procedure at such meetings;
 - (ii) convene a special meeting of the Council if requested thereto in writing by not less than one-third of the members of the Council;
 - (iii) determine a time and place for any meeting convened in terms of subparagraph (ii), which meeting shall be convened with at least three days' notice to members of the Council: Provided that an urgent meeting may be convened with less than three days' notice if it is ratified by the Council at that meeting; and
 - (iv) perform any other function assigned to it by the Council.
- (5) A Minister or head of any department of State or a person designated by such Minister or head or any other person in the service of the State shall, when requested to do so by the Council or a subcouncil, attend any meeting of the Council or the Subcouncil at which a matter relating to the functions of that department and the objects of the Council is to be discussed, and shall at such a meeting, subject to the provisions of this Act, furnish such information or document or explanation in connection with such matter as may be required by the Council or subcouncil.

- (6) Any person that has an interest in any matter under discussion at a meeting of the Council or a subcouncil may on the invitation of the Council or subcouncil attend that meeting and, if invited to do so, address it with regard to that matter.

Decisions

25. (1) All decisions of the Council or a subcouncil shall be made by members thereof alone and shall, as far as possible, be made on a basis of consensus.
- (2) In the event of there not being total consensus in respect of any decision, a decision which has the support of at least 80% (eighty percent) of the members of the Council or subcouncil concerned, shall be deemed to be the decision of the Council or the subcouncil, as the case may be.

NOTE: *This subsection has been declared to be a dispute and has been referred by the Negotiating Council to the Planning Committee for guidance.*

Administrative support staff and accounting

26. (1) The Council shall at its first meeting, or as soon as possible thereafter, appoint a person to the office of Executive Director who -
- (a) shall be responsible for the management of and administrative control over the staff appointed or seconded in terms of section 7(1)(d) and (e), respectively;
 - (b) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975) -
 - (i) be charged with the responsibility of accounting for State monies received or paid out for on account of the Council and the subcouncils; and
 - (ii) cause the necessary accounting and other related records to be kept;
 - (c) may exercise the powers and shall perform the functions and duties which the Council may from time to time confer upon, assign to or impose upon him or her in order to achieve the objects of this Act and shall, for the purposes hereof be accountable to the Council.

- (2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General.
- (3) The Executive Director and the persons referred to in section 7(1)(d) and (e) shall exercise their powers and perform their functions and duties in an impartial manner and shall, in so doing, be subject to such provisions of the laws governing the public service of the Republic as may be indicated by the Council and to the extent so indicated by the Council.
- (4) The financing of matters provided for in this Act shall be subject to -
 - (a) requests being received in the prescribed form in accordance with the budgetary processes of the Republic of South Africa; and
 - (b) the provisions of the Exchequer Act, 1975, the regulations and instructions issued in terms thereof, as well as the Auditor General Act, 1989 (Act No. 52 of 1989).

Legal proceedings against Council

- 27. (1) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply *mutatis mutandis* in respect of the Council.
- (2) In such application a reference in that Act to a Minister of a department shall be construed as a reference to the Chairperson or Chairpersons of the Council.

Amendment of Act

- 28. (1) The Council, in consultation with the State President, may determine the need for and the content of any amendment to or repeal of any provision of this Act, and the State President shall, by proclamation in the Gazette, repeal or amend the provisions of this Act accordingly.
- (2) Any such repeal or amendment shall have the force and effect of an Act of Parliament.

Duration

29. (1) This Act shall lapse upon the assumption of office by the members of the first cabinet in terms of the Constitution.
- (2) The Council and every subcouncil shall be dissolved on the date referred to in subsection (1).
- (3) (a) At such dissolution of the Council and the subcouncils, all assets, monies and liabilities of the Council, the subcouncils, and any other structure, organ or body established by or under this Act, shall revert to such department of State as the first cabinet appointed in terms of the Constitution may designate.
- (b) The Minister responsible for such department shall -
- (i) have the authority to wind up the affairs of such structures, organs or bodies;
- (ii) for the purpose of any legal relationships, including legal proceedings involving the Council, be the legal successor of the Council.

State bound

30. This Act shall bind the State.

Short Title and Commencement

31. (1) This Act shall be called the Transitional Executive Council Act, 1993, and shall come into operation on a date fixed by the State President, in consultation with the Negotiating Council or Council, by proclamation in the Gazette.
- (2) Different dates may be so fixed in respect of different provisions of this Act.

GOVERNMENT PUBLICATIONS



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